UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,498	06/23/2003	Kazuhiro Hosokawa	10812-2US (USN03001)	9671

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EXAMINER
LAY, MICHELLE K

ART UNIT	PAPER NUMBER
2672	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/601,498	HOSOKAWA ET AL.
	Examiner	Art Unit	
	Michelle K. Lay	2672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2005*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

    4a) Of the above claim(s) *1-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 March 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

1.   Claims **17 – 29** are rejected under 35 U.S.C. 102(e) as being anticipated by

Alabaster (US Publication No. US 2001/0000810 A1).

In regards to claims **17, 26, 27** –

Alabaster teaches a method of computerized behavior analysis that records the

dietary behavior of a user. The results may be collected for the purpose of conducting a

survey [[0012], line 3] or aid in training the user to make the proper food selections

[[0012], lines 8 – 9]. Fig. 1 illustrates the flowchart illustrating a diet behavior analysis

program. Pairs of food objects are presented, i.e., displayed (claim **17, 26, 27**:

displaying means for displaying questions which are to be answered by the user), to the

user who then inputs and records a choice of one of each pair of food objects presented

on the computer screen, and indicates his or her level of enthusiasm and desired

frequency of consumption of both items (claim **17, 26, 27**: at least one of the plurality of

ranks to be selected by the user for each of the plurality of items) [0039]. Although the

user is being presented a choice in images, an understood question is being asked as to which of the pair of foods the user desires. The level of enthusiasm and desired frequency of consumption (claim **17, 26, 27**: quantitatively expressing a strength of a tendency) is indicated by user indication, such as "mouse" selection, with corresponding graphics presented on the display [0039]. The program further monitors and stores the user's selection, level of enthusiasm and desired frequency of consumption. Every user choice is evaluated for calories, fat, fiber, portion size and a range of macro and micronutrients [0040].

Each food selection from paired images provides an indication of the innate liking for the item displayed, and since each individual food item or meal has nutritional characteristics that are distinctive, the program provides an accumulation of information that reflects the degree of liking for foods with those characteristics (claim **17, 26, 27**: selecting means for selecting at least one of the plurality of ranks based on data indicative of the user's answers) [[0041], lines 1 – 6]. Consequently, by way of example, if the user chooses the high fat rather than the low fat option 15 times out of 20, then evidence has been gathered that the user generally prefers the taste of fat and fatty foods (claim **17, 26, 27**: determining the user's constitution based on plurality of questions) [0041]. Therefore, it would be obvious to one skilled in the art at the time the invention was made that multiple questions, i.e. paired images, are presented to the user containing similar, or overlapping content that aide in determining the user's constitution. The progressively accumulated record of food choice may then be

interpreted quantitatively by matching these choices with a nutritional numerical

database [[0042], lines 1 – 3].

After responding to, for example, 300 paired food choices (i.e., "n" = 300) at steps

105 of Fig. 1, the program then analyzes the selections based on specific criteria. The

Behavior Analysis is thus based upon answers to paired or multiple choices being

grouped in categories that will indicate enthusiasm and frequency for certain types of

foods. These data are averaged as they accumulate until at the end of the analysis in

step 109, answers to questions about any of the key criteria are summarized in a final

graphically displayable report, which may be termed a Personal Diet Preference Profile

(claim **17**, **26**, **27**: displaying means for displaying the determined constitution on the

screen) [0047].

Fig. 11 shows the programming and operation of a digital computer facilitating use

of the display of Fig. 10. Initially, the user clicks on the "Begin" icon (227), the "Select"

icon (203), and one of the particular meal icons (205), (207), (208), (209), (210). In

response, in step 241, the computer causes display of an appropriate meal. Then the

computer receives and stores the user's "low", "medium", or "high" selection as to each

nutrient-related parameter item in step 243 (claim **17**, **26**, **27**: calculating a score)

[[0062], lines 1 – 9]. A numeric weight is attached to each selection such as "10" for the

least correct, "20" for closer to correct, and "30" for the most correct answer (claim **17**,

26, **27**: predetermined point allocation) [[0062], lines 9 – 12]. In step 245, the value of

each of the weights is accumulated, i.e., added to the value of the previous weight

parameters stored for each other prior meals (claim **17**, **26**, **27**: summing means)

[[0062], lines 12 – 14]. After "n" meals are presented, a progress report is generated, step 251. If the user clicks on the "progress report" icon (231), the program responds in step (255) by displaying the comparison of the total weights selected by the user to the maximum total weights achievable [0063]. Thus, the user can determine his or her type from the comparison, i.e. if the user is properly eating based on defined dietary needs (claim **17, 26, 27**: determining the user's constitution as at least one of the plurality of types).

The dietary evaluation and training methods are made available at a website where they may be accessed over the Internet by home personal computers and other remote terminals or sites. Fig. 17 illustrates a system wherein a website (271) supplies access to the interactive processes and displays illustrated herein over a communication line (273) to a remote site (275). The communication link (273) may be connected to one or more home personal computers, professional site computers or various other data processing apparatus that provides display and user interaction with interactive and graphical displays (claim **26**: a server computer which is connected through a communication network to a client computer) [0076].

In regards to claim **18** –

Each food selection from paired images provides an indication of the innate liking for the item displayed, and since each individual food item or meal has nutritional characteristics that are distinctive, the program provides an accumulation of information that reflects the degree of liking for foods with those characteristics [[0041], lines 1 – 6].

Consequently, by way of example, if the user chooses the high fat rather than the low fat option 15 times out of 20, then evidence has been gathered that the user generally prefers the taste of fat and fatty foods (claim **18**: determining the user's constitution based on plurality of questions) [0041]. Therefore, it would be obvious to one skilled in the art at the time the invention was made that multiple questions, i.e. paired images, are presented to the user containing similar, or overlapping content that aide in determining the user's constitution. The progressively accumulated record of food choice may then be interpreted quantitatively by matching these choices with a nutritional numerical database [[0042], lines 1 – 3].

Fig. 11 shows the programming and operation of a digital computer facilitating use of the display of Fig. 10. Initially, the user clicks on the "Begin" icon (227), the "Select" icon (203), and one of the particular meal icons (205), (207), (208), (209), (210). In response, in step 241, the computer causes display of an appropriate meal. Then the computer receives and stores the user's "low", "medium", or "high" selection as to each nutrient-related parameter item in step 243 (claim **18**: calculating a score) [[0062], lines 1 – 9]. A numeric weight is attached to each selection such as "10" for the least correct, "20" for closer to correct, and "30" for the most correct answer (claim **18**: predetermined point allocation) [[0062], lines 9 – 12]. In step 245, the value of each of the weights is accumulated, i.e., added to the value of the previous weight parameters stored for each other prior meals (claim **18**: summing means) [[0062], lines 12 – 14]. After "n" meals are presented, a progress report is generated, step 251 (claim **18**: distribution pattern of a plurality of sums) [[0063], lines 1 – 2].

The invention of Alabaster may be used for survey purposes. For example, if one wishes to know the average daily caloric intake among teenagers in high school. The teenagers could be asked to recreate their meals using the program as disclosed by Alabaster [0093]. Thus, scores would be calculated as disclosed resulting in a distribution pattern of a population (claim **18**: distribution pattern reflects how a population consisting of the plurality of sums is scattered).

In regards to claim **19** –

Each food selection from paired images provides an indication of the innate liking for the item displayed, and since each individual food item or meal has nutritional characteristics that are distinctive, the program provides an accumulation of information that reflects the degree of liking for foods with those characteristics [[0041], lines 1 – 6]. Consequently, by way of example, if the user chooses the high fat rather than the low fat option 15 times out of 20, then evidence has been gathered that the user generally prefers the taste of fat and fatty foods (claim **19**: determining the user's constitution based on plurality of questions) [0041]. Therefore, it would be obvious to one skilled in the art at the time the invention was made that multiple questions, i.e. paired images, are presented to the user containing similar, or overlapping content that aide in determining the user's constitution. The progressively accumulated record of food choice may then be interpreted quantitatively by matching these choices with a nutritional numerical database (claim **19**: the summing means determines the user's constitution) [[0042], lines 1 – 3].

In regards to claim **20** –

Alabaster teaches that it is recognized that methods according to his invention may be practiced in conjunction with conventionally known hardware, such as personal computers, which may include a microprocessor and associated read-only and random access memory, as well as accompanying CD-ROM, CD-ROM or DVD drives, hard disk storage, or other storage media (claim **20**: proper-diet-plan memory), video memory, mouse, keyboard, microfiche sound I/O, monitors and other such peripheral devices. Multiple terminal embodiments may be configured utilizing a computer server and a plurality of video terminals for a plurality of users (claim **20**: a system for supporting, by the use of a computer with a screen) [0094].

Based on the data collected, recommended changes in food intake and frequency in order to achieve new dietary goals may be prescribed. Fig. 9 illustrates a screen display that reflects needs to change food choices, frequency and portion sizes. On this display, "optimal" intake or various categories (claim **20**: displaying the retrieved proper-diet-plan on the screen) [0054]. This plan is built on goals that are either generated by the computer to conform to nationally establish dietary objectives, or to dietary goals that are designed by a health professional or possibly imposed by the user (claim **20**: proper-diet-plan suitable to the user based on the constitution determined by the apparatus) [[0055], lines 5 – 9]. It would have been obvious to one skilled in the art at the time the invention was made that the computer generated dietary goals are stored in memory or storage media.

In regards to claim **21** –

Upon completion of the Diet Behavior Analysis, the patient receives a Diet Report, e.g., Fig. 9, which is designed to highlight the strengths and weaknesses of their instinctive dietary habits. This analysis is then used to design new dietary goals and increase motivation. These dietary goals may be designed as far as possible to include foods that have been identified as "preferred foods" (claim **21**: provide a proper diet which is suitable to the user's constitution and which contributes to an improvement in the user's constitution towards a medium one) by procedures leading to generation of Fig. 7 of the Diet Behavior Analysis [0058].

In regards to claim **22** –

Each food selection from paired (or multiple) images provides an indication of the innate liking for the item displayed, and since each individual food item or meal has nutritional characteristics that are distinctive, the program provides an accumulation of information that reflects the degree of liking for foods with those characteristics. Consequently, by way of example, if the user chooses the high fat rather than the low fat option 15 times out of 20, then evidence has been gathered that the user generally prefers the taste of fat and fatty foods [0041]. Therefore, it would be obvious to one skilled in the art at the time the invention was made that multiple questions, i.e. paired images are presented to the user containing similar, or overlapping content.

In regards to claim **23** –

By way of example, if the user chooses the high fat rather than the low fat option 15 times out of 20, then evidence has been gathered that the user generally prefers the taste of fat and fatty foods [0041].

In regards to claim **24** –

From the rationale of claim **17** that determines the user's constitution, once the diet goals have been defined, the user begins visual diet training. Visual diet training is designed to enable the patient to recognize at a glance what their new diet should look like. Visual training is accomplished by user interaction via the computer with a series of virtual meals [0057]. The dietary training shows the user meals and foods that look as real as possible. The computer program provides the ability to create partial or full meals, adjust portion sizes, discover the nutritional contribution of each component of the meal or each food item selected, assess the final nutritional content of the whole meal, and accumulate this information as a series of meals are created (claim **24**: providing a customer with a selected one of a plurality kinds of oral intakes, which selected one is compatible with the customer's constitution) [[0059], lines 1 – 8]. A first approach to the dietary training is illustrated in conjunction with Fig. 10. The computer display screen (201) includes a number of mouse-selectable items or icons permitting the user to select a test meal type, i.e., breakfast, lunch, dinner, snacks, and drinks. In response to the selection, the computer presents the user with a plate including various

selected items (claim **24**: selecting at least one of the plurality kinds of oral intakes

which correspond to the determined constitution) [[0060], lines 1 – 12].

In regards to claim **25** –

Pairs of food objects are presented, i.e., displayed (claim **25**: displaying means for

displaying questions which are to be answered by the user), to the user who then inputs

and records a choice of one of each pair of food objects presented on the computer

screen, and indicates his or her level of enthusiasm and desired frequency of

consumption of both items [0039]. Although the user is being presented a choice in

images, an understood question is still being asked as to which of the pair of foods the

user desires. The level of enthusiasm and desired frequency of consumption is

indicated by user indication, such as "mouse" selection, with corresponding graphics

presented on the display [0039]. The program further monitors and stores the user's

selection, level of enthusiasm and desired frequency of consumption. Every user

choice is evaluated for calories, fat, fiber, portion size and a range of macro and

micronutrients [0040]. Each food selection from paired images provides an indication of

the innate liking for the item displayed, and since each individual food item or meal has

nutritional characteristics that are distinctive, the program provides an accumulation of

information that reflects the degree of liking for foods with those characteristics [[0041],

lines 1 – 6]. Consequently, by way of example, if the user chooses the high fat rather

than the low fat option 15 times out of 20, then evidence has been gathered that the

user generally prefers the taste of fat and fatty foods (claim **25**: displaying means for

determining the user's condition as one of a predetermined plurality of types) [0041].

Therefore, aiding in determining the user's constitution. The progressively accumulated

record of food choice may then be interpreted quantitatively by matching these choices

with a nutritional numerical database (claim **25**: determining the user's condition)

[[0042], lines 1 – 3].

In regards to claims **28, 29** –

The invention of Alabaster employs two programs that complement each other.

The first is analytical, while the second teaches new dietary habits (claim **28**: the

method is performed by a computer program) [[0033], lines 4 – 6].

Alabaster teaches that it is recognized that methods according to his invention may

be practiced in conjunction with conventionally known hardware, such as personal

computers, which may include a microprocessor and associated read-only and random

access memory, as well as accompanying CD-ROM, CD-ROM or DVD drives, hard disk

storage, or other storage media, video memory, mouse, keyboard, microfiche sound

I/O, monitors and other such peripheral devices. Multiple terminal embodiments may be

configured utilizing a computer server and a plurality of video terminals for a plurality of

users [0094]. Therefore, it would have been understood to one in the art at the time the

invention was made that the program taught by Alabaster would have been stored in a

computer-readable storage medium, such as the CD-ROM or the memory within the

microprocessor (claim **29**: computer program is stored in a computer-readable storage

medium).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure
US Publication No. US 2002/0128992 A1 to Alabaster.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle K. Lay whose telephone number is (571) 272-7661. The examiner can normally be reached on Monday - Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on (571) 272-7664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mkl 05.03.2005

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